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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 27 TH DAY OF May 1998

BEFORE

THE HON'BLE MR.JUSTICE H.RANGAVITTALACHAR

HRRP No.1439 of 1993

Between

Between :

Smt.G.Susheela,
w/o.late Doraiswamy Naidu
since deceased by her legal representative:

1. Smt.Kala, w/oD.Venkatesh,
Daughter-in-law of
Smt.G.Susheela.
2. D.Venkatesh,
s/o.kate Doraiswamy Naidu,

Both are residing at No.2,
Milk Colony, Malleshwaram West,
Bangalore. .. Petitioners

(By Sri.B.Veerabhadrappe - Adv.)

And :

Sri.Mahesh, s/o/J.K.Mehta,
r/o.No.842, Veerapathi Chaya,
Indiranagar I Stage,
Bangalore - 27. .. Respondents

(By Sri.R.Gururajan & MLN Reddy - Adv.)

This CRP is filed under Sec.50(1) of KRC Act against the order dtd.13.10.1993 passed in HRC No.3140/89 on the file of the Court of Small Causes Judge, Bangalore City, SCCH -12 dismissing the petition filed under Sec.21(1)(a) & (h) of KRC Act.

This CRP coming on for hearing this day, the Court made the following:

ORDER ..

H.R.V

ORDER

One Smt.G.Susheela filed an eviction petition in respect of a residential accommodation situated at Bangalore on the ground that at present she has been staying in the outhouse of the schedule premises and on account of the changed circumstances viz., that her son Venkatesh got married who for want of accommodation is compelled to stay with his father-in-law, therefore she requires the premises reasonably and bonafide for her own use and occupation.

This petition was resisted by the respondent/tenant. Parties went to trial and adduced evidence in support of their respective cases; The learned Judge dismissed the eviction petition solely on two grounds viz., that the landlady did not prove that her son and daughter-in-law were under threat of eviction from their father-in-law in whose house they were staying or there is any compelling need to occupy the premises. This order is under challenge in this revision petition.

K.R.v

It has to be stated that during the pendency of the trial before the trial Court, the said Susheela - petitioner died and her legal representatives i.e., the son and daughter-in-law prosecuted the petition. The learned Judge has dismissed the petition solely on the ground that the petitioner has not proved that her son and daughter-in-law were under compulsion to vacate the house where they were in occupation and the facts of the case does not show that there is any compelling need.

In my view, this approach of the learned Judge cannot be appreciated. Admittedly, the son and daughter-in-law of late Susheela for want of accommodation were living in the house of the father-in-law of the son. They had no right to reside in the said house. In a case where the landlord or landlady who is residing in somebody's house where they have no right to stay, aspires to shift to their own residence, that itself is a circumstance to hold that the requirements is reasonable and bonafide. Therefore the order of the learned Judge cannot be sustained.

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The evidence in the case clearly discloses that for want of accommodation, late Susheela, her son and daughter in law were residing in the house belonging to one Chakrapani, though according to them they were staying there as tenants but the learned Judge has disbelieved the latter aspect of the case. But it cannot be disputed that Susheela while she was alive alongwith her son and daughter-in-law were staying in a house which did not belong to them. However comfortable they may be in ~~the~~^{her} house, it is still not unreasonable to aspire to shift to their own house when it is available. Under the circumstances, the requirements of the petitioners has to be held as reasonable and bonafide.

In so far as the question of comparative hardship is concerned, if eviction is refused, it would be virtually compelling the petitioner to reside in somebody's house for all times to come whereas the respondent may with some difficulty be able to secure an alternative accommodation. Besides it has also to be stated that the petitioners had

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offered an outhouse to the respondent if he vacates the schedule premises. Therefore in my view, it is the petitioners who suffer greater hardship than the respondents.

In so far as the question of partial eviction is concerned, since the schedule premises has a single bedroom, kitchen, bathroom, unless some structural alterations are made to the premises by providing an extra kitchen, a bathroom and other amenities, there cannot be an order for partial eviction. To make structural alterations, the landlord has to obtain the sanctioned plan and spend huge amounts. Under the circumstances, it cannot be said that it is feasible to order partial eviction.

For the reasons stated above, this revision petition is allowed. The order of the learned Judge of the Small Causes is set-aside. Consequently the eviction petition filed by the petitioner is ~~also set-aside~~, allowed.

However at this stage, learned counsel appearing for the petitioner/tenant Sri.Gururaj submitted that the tenant has a

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drug shop near the residential premises from which also he has been asked to vacate and is a old man with meagre income. Under the circumstances, it is difficult immediately to mobilise enough resources to secure suitable alternative accommodation both for the drug shop and also for the residence he therefore prayed that 3 years time may be granted for the tenant to vacate the premises.

Having regard to the fact that the tenant is an old man and has to live with his meagre income and also has suffered an order of eviction of the premises where he is carrying on the business and the difficulty of securing suitable alternative accommodation, two and a half years time is granted for the respondents from today to quit and deliver vacant possession of the premises to the landlord subject to the following conditions:

(a) that the tenant shall file an affidavit undertaking to voluntarily vacate the premises within two and a half years from today. The said affidavit shall be filed within 4 weeks from today after having served a copy thereof on the landlord's counsel.

(b) that the tenant shall pay the rents regularly as and when it falls due.

(c) that the tenant shall not sublet or sublease the premises.

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Petition dismissed.

Sd/-
JUDGE

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